reason the committee is discharged. It is hard to believe that the legislature intended to clothe the committee with a power it could never exercise. The committee, the only one charged in law with the care of the incompetent's property, should be permitted to protect him from those who would take advantage of his unfortunate position. It is submitted, therefore, that because of the inherent power of equity, and the duty of the state toward the insane, that the section should be liberally construed.

EFFECT OF EXECUTION UNDER EQUAL JUDGMENT LIENS.—In the recent case of *Hulbert* v. *Hulbert* (1916) 216 N. Y. 430, the New York Court of Appeals, in reversing the Appellate Division, has laid down the rule that as between judgments attaching simultaneously as liens to land subsequently acquired by the judgment debtor, no priority can be obtained by the creditor first issuing execution.[1] The lack of authority on which the decision may be rested warrants an investigation of the principles underlying the hitherto generally accepted rule that priority can be gained in this manner. The question may arise either from the simultaneous rendering, entering, or docketing of two or more judgments against the debtor who at that time owns land;[2] or from the acquisition of land by the debtor subsequent to the rendering, entering, or docketing of two or more judgments against him.[3] In both cases the liens attach simultaneously, and the creditors must share *pro rata* if the property is not enough to satisfy both, unless priority may be later acquired by the creditor first issuing execution entitling him to a full satisfaction of his judgment.

All authorities agree that priority may be so acquired, and base their opinions on the New York cases of *Adams* v. *Dyer* and *Waterman* v. *Haskin*, which are overruled by the principal case.[4] An attempt

[1]The decision of the Appellate Division is discussed in 15 Columbia Law Rev., 173.

[2]Black, Judgments (2nd ed.) § 443. In New York the judgment becomes a lien from the date of docketing. N. Y. Code Civ. Proc., §§ 1250, 1251.

[3]Gay *v.* Rainey (1878) 89 Ill. 221; Matter of Hazard (N. Y. 1893) 73 Hun 22, aff'd. in 141 N. Y. 586, 36 N. E. 739. In Oregon, by the doctrine of relation back, the liens, although attaching simultaneously, are referred back to the date of the judgments, and the senior lien has priority. Creighton *v.* Leeds (1881) 9 Ore. 215. This case is criticised in Ware *v.* Delahaye (1895) 95 Iowa 667, 64 N. W. 640, where an opposite result was reached under a similar statute. In Pennsylvania and Ohio no judgment liens attach to after acquired property, and the execution therefore determines priority among the creditors. Colhoun *v.* Snider (Pa. 1813) 6 Binn. 135; Roads *v.* Symmes (1824) 1 Ohio 281. The word "lien" is used merely to denote the right of the creditors to satisfy his judgment by execution. Ross & Co's Appeal (1884) 106 Pa. 82.

[4]Adams *v.* Dyer (N. Y. 1811) 8 Johns. 347; Waterman *v.* Haskin (N. Y. 1814) 11 Johns. 228. These cases are regarded as establishing the law for the following jurisdictions: Bliss *v.* Watkins (1849) 16 Ala. 229; Smith *v.* Lind (1862) 29 Ill. 24; Michael *v.* Boyd (1848) 1 Ind. 259; Cook & Sargent *v.* Dillon (1859) 9 Iowa 407; Burney *v.* Boyett (1834) 2 Miss. 39; Bruce *v.* Vogel (1866) 38 Mo. 100. See Freeman, Judgments (3rd. ed.) § 374; Black, Judgments (2nd ed.) § 455; Rorer, Judicial Sales, §§ 579, 826. It is true, however, that in Iowa the general rule, though applied to judgments entered on the same day, is not applied to judgment liens on after-acquired property. Kisterson *v.* Tate (1895) 94 Iowa 665, 63 N. W. 350.

is made in the latter to explain *Adams* v. *Dyer,* on the ground that the court erroneously supposed execution to be necessary to attach the lien, and that the first execution established the first lien. It is admitted that the effect of the statute then in force was to make the mere docketing of the judgment a lien, without the necessity of execution,[5] but it is said that the court overlooked this. An examination of *Adams* v. *Dyer,* and especially of *Waterman* v. *Haskin,* it is submitted, permits of no such explanation. The court clearly regarded the liens as equal at their inception, and allowed the creditor first issuing execution to obtain priority as a reward for his vigilance.[6] The principal case is therefore irreconcilable with *Adams* v. *Dyer* and all the other authorities, and it cannot be supported on the ground of a change in the statute, as it is admitted that the effect of the statute now, as then, was to make the mere docketing of the judgment create the lien.

In support of the decision it may be urged that it is in accord with the equitable tendency of the modern cases to place all creditors upon an equality, that the former rule is harsh in its operation,[7] and that frequently the issuance of a prior execution is due, not so much to vigilance, as to the accidental discovery by one creditor of the subsequent acquisition of the land by the judgment debtor, which should not give him priority over the others. On the other hand, it is a cardinal doctrine of equity that vigilance shall be rewarded,[8] as in the case of the judgment creditor who files his bill to set aside a fraudulent conveyance by the debtor prior to the rendering of the judgment. The instant title is revested in the debtor the liens of all judgment creditors attach simultaneously, but the one who set aside the conveyance is given priority.[9] The issuance of an execution has always been regarded by equity, whether rightly or no it is difficult to say, as such vigilance as will entitle the creditor to priority,[10] and the result has been salutary in encouraging prompt action on the part of creditors. In such a case, therefore, where the equities will fluctuate according to the peculiar facts, the advantage to be gained by overturning the universally accepted doctrine of priority is so slight as not to warrant the extraordinary measure of judicial legislation resorted to in the principal case, and it is submitted that *stare decisis* should have controlled.

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[5]Koning *v.* Bayard (1829) 14 Fed. Cas. 843.

[6]In Adams *v.* Dyer, the court says: "We must then consider the judgments equal, as to the date of the lien, and the next question is, whether any priority hath subsequently been acquired." In Waterman *v.* Haskin, the court says: " . . . a judgment lien attaches upon the time of filing the record of judgment."

[7]See Patterson *v.* Stephenson (1883) 77 Mo. 329, 336.

[8]The maxim, *vigilantibus, non dormientibus, jura subveniunt,* is quoted in many of the cases following Adams *v.* Dyer, *supra.* See Bliss *v.* Watkins, *supra*; Smith *v.* Lind, *supra*; Elston *v.* Castor (1884) 101 Ind. 426.

[9]Doster *v.* Manistee Nat. Bank (1900) 67 Ark. 325, 55 S. W. 137; Davidson *v.* Burke (1892) 143 Ill. 139, 148, 32 N. E. 514; Boyle *v.* Maroney (1887) 73 Iowa 70, 35 N. W. 145; Gordon *v.* Lowell (1842) 21 Me. 251; but see White Bank of Buffalo *v.* Farthing (1886) 101 N. Y. 344, 44 N. E. 734. A contrary result is reached if the liens can attach when rendered in spite of the fraudulent conveyance. Jackson *v.* Holbrook (1887) 36 Minn. 494, 32 N. W. 852.

[10]Lowry *v.* Reed (1883) 89 Ind. 442; Lippencott John & Co. *v.* Wilson (1875) 40 Iowa 425; Bradley *v.* Hefferman (1900) 156 Mo. 653, 57 S. W. 763.